

# Lending Discrimination and Fair Housing

## Types of Lending Discrimination

**Disparate Treatment:** Mortgage application is denied because of consideration of the applicant's race or other protected characteristic.

- Rejected Applicant (Plaintiff) must show:
  - (1) Membership in a protected class
  - (2) He or she applied for and was qualified for a loan with a lending institution;
  - (3) The loan was rejected despite his or her qualifications; and
  - (4) The lending institution continued to approve loans for applicants with similar qualifications.
- Testers (similarly situated applicant, not a member of plaintiff's protected class) are often utilized to prove disparate treatment.

**Disparate Impact:** A lending institution's facially neutral policy has a significant and adverse affect on a group of people made up of one or more protected characteristics. There must be a causal connection between policy and adverse affect.

- Criteria for evaluating disparate impact claims:
  - (1) The strength of the plaintiff's statistical showing;
  - (2) The legitimacy of the defendant's interest in taking the action complained of;
  - (3) Some indication-which might be suggestive rather than conclusive-of discriminatory intent; and
  - (4) The extent to which relief could be obtained by limiting interference by, rather than requiring positive remedial measures of, the defendant.

**Redlining:** The practice of using certain, protected neighborhood characteristics as a basis for declining to lend to a borrower who wishes to purchase a home in that neighborhood.

- Can be very difficult to prove as companies are allowed to make smart business decisions in declining loans. Deference is typically given to the lender.
- **Reverse Redlining:** The practice of approving loan applications for homebuyers in a protected class in a predatory manner. This practice is attributed as a major cause of the recent housing market collapse.
  - Truth in Lending Act (TILA) and unfair-and-deceptive-acts and practices (UDAP) laws help protect consumers against predatory lending.

## Regulatory Protections Against Discriminatory Lending

### **Equal Credit Opportunity Act (ECOA):**

- Applicable to entities that extend credit to consumers, banks, credit card companies, and lenders.
- Does *not* apply to activities prior to lending
- Amended to include a number of protected classes:
  - Race
  - Religion
  - National origin
  - Gender
  - Marital status
  - Age
  - Income derived from public assistance

## Fair Housing Act (FHA)

- Applies to all structures that are or will be occupied as a residence (including land sold for the construction of a residence).
- Applies to post *and* pre lending activities
- Protected characteristics include:
  - Race
  - National origin
  - Religion
  - Gender
  - Familial status (children under the age of 18 living with a parent)
  - Disability (physical or mental) – or does the the FHA state “emotional”

## FHA Prohibits:

- Refusal to make a mortgage loan
- Refusal to provide information regarding loans
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees
- Discrimination in appraising property
- Refusal to purchase a loan or setting difference terms or conditions for purchasing a loan

## Filing a Complaint:

- With the Department of Housing and Urban Development; this will initiate an investigation. Must be within **one year** of the incident.
- File a direct court action within **two years** of the incident.
- Iowa Code requires administrative complaints be filed within **300 days** from the date of the violation.
- Attorney General may file suit on behalf of aggrieved parties.
- Arbitration agreements may disable parties’ ability to file a claim.

The **Iowa Civil Rights Act** provides protection similar to the FHA, with the addition of sexual orientation and gender identity as protected classes.

## For further information, please contact:

### Iowa Civil Rights Commission

Grimes Building,  
400 E. 14<sup>th</sup> St.  
Des Moines, IA 50319  
515-281-4121 or 1-800-457-4416  
[www.state.ia.us/government/crc](http://www.state.ia.us/government/crc)

### HUD—Regional Fair Housing Office

400 State Ave., Room 200  
Kansas City, Kansas 66101  
913-551-6993 or 1-800-743-5323  
[www.hud.gov](http://www.hud.gov)

### For any other questions or concerns

Visit: [www.federalreserveconsumerhelp.gov](http://www.federalreserveconsumerhelp.gov)  
or call 1-888-851-1920

